



HF 2309 – Synthetic Drugs (LSB 5168YH)

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Fiscal Note Version – New

Description

House File 2309 modifies the penalties for controlled substances containing a cocaine base by reducing the disproportionality between crack and powder cocaine levels, enhances penalties for imitation controlled substances, modifies the controlled substances list, and lengthens the time the Pharmacy Board is allowed to temporarily designate substances as controlled substances before the General Assembly must take action to codify the changes.

Background – Imitation Controlled Drugs

The chemical compositions of imitation controlled drug products are constantly changing to avoid newly enacted laws to place the products on the scheduled lists of controlled substances. Currently, if the Pharmacy Board designates a new substance as controlled, the General Assembly has 60 days upon convening to make corresponding changes in Iowa Code chapter [124](#), or the Board's temporary designation is nullified. This bill lengthens that time to two years before the General Assembly must take action to codify the changes, and also codifies newly identified synthetic formulas. This bill also repeals Code chapter [124A](#) and transfers the regulation of imitation controlled substances to Code chapter [124](#).

Under this bill, penalties relating to imitation controlled substances are enhanced as follows:

- Possession of more than 10 kilograms becomes a Class B felony punishable by no more than 50 years of confinement and a fine of not more than \$1.0 million.
- Possession of 5 to 10 kilograms becomes a Class B felony punishable by no more than 25 years of confinement and a fine of between \$5,000 and \$100,000.
- Possession of less than 5 kilograms becomes a Class C felony punishable by a fine of between \$1,000 and \$50,000.
- There are other modifications to penalties contained within the bill.

Correctional Information – Imitation Controlled Drugs

The table below shows the FY 2010-2015 convictions in Iowa for imitation controlled substances. The overall conviction rate is 23.5%. The correctional impact is expected to be minimal due to the low number of convictions under current law.

Offense Class	FY 2010-2015 Convictions
Serious Misdemeanor	1
Aggravated Misdemeanor	23
Total Convictions	24

Enhancing the penalties to Class B and Class C felonies will create additional costs for every conviction. The average state cost for one Class B felony conviction ranges from \$9,600 to \$34,800. The average state cost for one Class C felony conviction ranges from \$7,800 to \$18,400. The maximum fiscal impact to the state of Iowa is estimated to be \$139,200 per year (average of four convictions at the maximum Class B felony conviction cost of \$34,800). This bill may increase the conviction rate, but that is not possible to estimate at this time.

Minority Data Information – Imitation Controlled Drugs

The following table shows the FY 2010-2015 offender-based convictions for imitation controlled substances, by race/ethnicity, according to the Justice Data Warehouse. Data was available for 15 of the 24 convictions recorded.

Conviction Offense Class	White	Black	Other
Serious Misdemeanor	100.0%	0.0%	0.0%
Aggravated Misdemeanor	71.4%	21.4%	7.1%
Total Convictions	73.3%	20.0%	6.7%

To the extent convictions occur under the provisions of the bill, there will be a minority impact, specifically on Blacks. Blacks represent approximately 3.3% of the Iowa population, but represent approximately 20.0% of the convictions impacted under this bill.

Background – Powder and Crack Cocaine

The Public Safety Advisory Board (PSAB) of the Iowa Department of Human Rights has recommended modifying the penalties for crack and powdered cocaine to address the disparity in penalties contributing to the disproportionate incarceration of Blacks within the state. This bill will change the current ratio of 10:1 for establishing penalties (100 grams of powder cocaine to 10 grams of crack cocaine), to a ratio of 2.8:1 (100 grams of power cocaine to 35 grams of crack cocaine).

This bill also changes the threshold limits for cocaine base substances (crack cocaine) punishment.

- More than 125 grams (current law is 50 grams) becomes a Class B felony punishable by confinement of no more than 50 years and a fine of no more than \$1.0 million.
- Possession of 35 to 125 grams (current law is 10 to 50 grams) becomes a Class B felony punishable by confinement of no more than 25 years and a fine of \$5,000 to \$100,000.
- Less than 35 grams (current law is 10 grams) becomes a Class C felony punishable by a fine of not less than \$1,000.

Correctional Impact – Powder and Crack Cocaine

According to an analysis done for the PSAB recommendation, under this proposal offenders that currently enter prison for a Class B felony (25 years) drug convictions will instead be convicted of a Class C felony (10 years). While this will not result in an immediate impact on the prison population, Class C nonviolent offenders serve an average of 17.6 months in prison, versus 36.9 months for Class B nonviolent offenders. The net impact in prison population over the long term would be approximately 11 fewer offenders. With a marginal cost for the prison system at \$18.43/day, this will result in an estimated savings of at least \$74,000 per year after year four.

Minority Impact - Powder and Crack Cocaine

It is expected this bill would reduce the disproportionate impact on Blacks slightly. The reduction will occur over time.

Summary of Impacts

Minority Impact: There will be a favorable minority impact in regards to the powder and crack cocaine provisions, and an unfavorable minority impact in regards to the imitation controlled drug provisions. Refer to the Legislative Services Agency (LSA) [Minority Impact Statements Memo](#) dated January 26, 2016, for information related to minorities in the criminal justice system.

Correctional Impact: There will be a savings in correctional spending in regards to the powder and crack cocaine provisions, and potential additional costs in correctional spending in regards to the imitation controlled drug provisions. The LSA [Correctional Impact Statements Memo](#) dated February 18, 2016, contains additional information.

Fiscal Impact: The additional cost for enforcement and regulation by law enforcement agencies at the state and local levels is expected to be minimal. The additional conviction costs to the state of Iowa will be offset over the long term by lower costs in correctional spending. The net impact is estimated to be less than \$100,000 annually.

Sources

Iowa Department of Human Rights, Criminal and Juvenile Justice Planning Division
Iowa Department of Human Rights, Public Safety Advisory Board
Iowa Department of Corrections

/s/ Holly M. Lyons

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The fiscal note for this bill was prepared pursuant to [Joint Rule 17](#) and the Iowa Code. Data used in developing this fiscal note is available from the Fiscal Services Division of the Legislative Services Agency upon request.
